



Senate

General Assembly

File No. 419

February Session, 2008

Substitute Senate Bill No. 333

Senate, April 3, 2008

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING COMPREHENSIVE ETHICS REFORMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) There is established a
2 Legislative Ethics Committee that shall review and adjudicate any
3 charges brought against a member of the House of Representatives or
4 the Senate pursuant to subsection (f) of this section for acts that violate
5 the Legislative Code of Conduct described in section 2 of this act.

6 (b) The six members of the Legislative Ethics Committee shall be
7 appointed as follows: (1) One by the president pro tempore of the
8 Senate; (2) one by the speaker of the House of Representatives; (3) one
9 jointly by the president pro tempore of the Senate and the speaker of
10 the House of Representatives, who shall serve as cochair of the
11 committee; (4) one by the minority leader of the Senate; (5) one by the
12 minority leader of the House of Representatives; and (6) one jointly by
13 the minority leader of the Senate and the minority leader of the House
14 of Representatives, who shall serve as cochair of the committee.

15 Members of the committee shall serve two year terms concurrent with
16 their term of office.

17 (c) A quorum of the committee shall be required to conduct any
18 business. Four members of the committee shall constitute a quorum.
19 The committee shall function without regard to recess periods or
20 adjournment.

21 (d) The powers and duties of the Legislative Ethics Committee shall
22 consist of the following: (1) Issuing written advisory opinions upon the
23 written request of any member of the Senate or House of
24 Representatives regarding the Legislative Code of Conduct described
25 in section 2 of this act; (2) receiving complaints of any alleged violation
26 of the Legislative Code of Conduct by a member and referring
27 complaints to the Chief Court Administrator to enable a judge trial
28 referee to determine whether probable cause exists to believe that a
29 violation of such code has occurred; (3) investigating complaints of any
30 alleged violation of the Legislative Code of Conduct by a member if a
31 judge trial referee makes a determination that probable cause exists to
32 believe that a violation of such code has occurred; and (4) maintaining
33 a record of its proceedings in addition to copies of advisory opinions
34 issued by the committee in order to achieve consistency in
35 recommendations and the issuance of advisory opinions.

36 (e) Any member of the General Assembly may request, in writing,
37 an advisory opinion regarding the Legislative Code of Conduct
38 generally or its applicability to a real or hypothetical situation. Any
39 advisory opinion issued by the Legislative Ethics Committee shall be
40 made in writing and publicly available for review, provided any
41 request by a member for an advisory opinion shall remain confidential.
42 Any member who acts in good faith upon any advisory opinion issued
43 by the Legislative Ethics Committee concerning such member shall not
44 be subject to discipline by their respective chamber with regard to the
45 matters covered by such advisory opinion provided there was a full
46 disclosure to the committee of all facts necessary for issuance of the
47 advisory opinion.

48 (f) (1) A complaint may be filed with the Legislative Ethics
49 Committee by any member of the General Assembly. A complaint may
50 not allege a violation that occurred prior to the adoption of the
51 Legislative Code of Conduct.

52 (2) In order for a complaint to be valid, it shall: (A) Be in writing; (B)
53 state the name of the person filing the complaint; (C) state the name of
54 the member who is alleged to have committed a violation of the
55 Legislative Code of Conduct; (D) set forth allegations that, if true,
56 would constitute a violation of the Legislative Code of Conduct. Such
57 allegations shall be stated with sufficient clarity and detail to enable
58 the committee to make a finding; (E) state the date of the alleged
59 violation; (F) include a statement that the allegations are true to the
60 complainant's own knowledge or that the complainant believes them
61 to be true; and (G) be signed by the complainant under penalty of
62 perjury.

63 (3) If the complaint is deficient as to form, the complaint shall be
64 returned to the complainant with a statement that indicates the nature
65 of the deficiency. If a complaint, previously found to be deficient as to
66 form, is refiled with the committee in a valid form, the party charged
67 in the complaint shall be provided with a copy of the new complaint.
68 Any subsequent amendments to a complaint that are filed with the
69 committee shall also be served or personally delivered to the member
70 charged in the complaint. If the complaint is sufficient as to form, the
71 committee shall review the complaint to determine whether the
72 complaint states a charge that may be investigated by the committee.

73 (4) The committee shall promptly send a copy of a valid complaint
74 to the member alleged to have committed the violation, who shall
75 thereafter be designated as the respondent.

76 (5) If the committee determines that a complaint is not valid, the
77 complaint shall be dismissed and returned to the complainant with a
78 notice of dismissal stating the reason or reasons for the dismissal.

79 (g) (1) If the committee determines that a complaint is valid, the

80 committee shall request that the Chief Court Administrator appoint a
81 judge trial referee to review the allegations contained in the complaint
82 and determine whether there is probable cause to believe that a
83 violation of the Legislative Code of Conduct has occurred and whether
84 an evidentiary hearing on the complaint should be held by the
85 committee. Any such review and subsequent evidentiary hearing shall
86 be closed to the public. The records and other documents used in the
87 course of any such review or evidentiary hearing shall not be subject to
88 disclosure under chapter 14 of the general statutes, except if the
89 respondent requests such disclosure.

90 (2) During any review or hearing conducted pursuant to
91 subdivision (1) of this subsection, the respondent shall have the right
92 to appear and be heard and to offer any information that may tend to
93 disprove any such allegation. The respondent shall also have the right
94 to be represented by legal counsel and to examine and cross-examine
95 witnesses. Any finding of probable cause to believe the respondent is
96 in violation of any provision of the Legislative Code of Conduct shall
97 be made by a judge trial referee not later than thirty days after the
98 committee refers the complaint alleging a violation, except that such
99 thirty-day period shall not apply if the judge trial referee determines
100 that good cause exists for extending such limitation period.

101 (3) If a judge trial referee determines that probable cause exists to
102 believe that the respondent violated the Legislative Code of Conduct,
103 the committee shall initiate hearings to determine whether there has
104 been a violation of the Legislative Code of Conduct. Any such hearing
105 shall be initiated by the committee not later than thirty days after the
106 judge trial referee's determination of probable cause. The committee
107 may grant one fifteen-day extension for the starting date of such
108 hearing upon the mutual consent of the complainant and the
109 respondent. The final disposition of any violation that the committee
110 has found to have been established by clear and convincing evidence
111 shall be made not later than fourteen days after the conclusion of the
112 hearing on the complaint.

113 (4) The committee shall receive all admissible evidence, determine
114 any factual or legal issues presented during the hearing, and make
115 findings of fact based upon evidence received. Hearings shall be open
116 to the public. The rules of evidence shall apply in any such hearing
117 before such committee.

118 (5) For an allegation to be proved, a majority of the committee shall
119 vote that it is proved by clear and convincing evidence. The
120 cochairpersons of the committee shall dismiss each allegation that is
121 not proved by clear and convincing evidence. If a majority of the
122 committee votes that a count was not proved by clear and convincing
123 evidence, a motion to reconsider such vote may only be made by a
124 member of the committee who voted that the count was not proved by
125 clear and convincing evidence.

126 (6) Upon the conclusion of any such hearing, the committee shall
127 make a recommendation to the respective chamber as to what action it
128 deems appropriate and that such recommendation shall be one of the
129 following: Expulsion, censure, reprimand or no action. The
130 committee's final recommendation shall be in the form of a resolution
131 for approval or rejection by the respective chamber.

132 (h) (1) A member of the Legislative Ethics Committee shall be
133 disqualified from participating in any proceeding before the committee
134 involving a complaint against such member. If a complaint is filed
135 against a member, the appointing authority shall appoint another
136 member to serve in that member's place while the complaint is under
137 review. Any member of the committee who is found to have violated
138 the Legislative Code of Conduct shall be ineligible to serve again as a
139 member of the committee.

140 (2) A member of the committee may recuse himself or herself from
141 participating in any investigation of the conduct of a member upon
142 submission of a written statement that he or she cannot render an
143 impartial and unbiased decision in the matter.

144 (3) If a member of the committee is disqualified or recuses himself

145 or herself from participating in any committee proceeding, the
146 appointing authority shall appoint a replacement member during the
147 period of the original member's disqualification or recusal.

148 (i) Upon receipt of the committee's final recommendation, the
149 respective chamber shall: (1) Consider the recommendation of the
150 committee within fourteen days; and (2) by a majority vote of such
151 chamber, either accept, dismiss or alter such recommendation.

152 (j) If the committee recommends expulsion, acceptance of such
153 recommendation shall require a two-thirds vote of all members of the
154 respective chamber. Acceptance of a committee recommendation for
155 reprimand or censure shall require a majority vote of the members of
156 the respective chamber.

157 (k) For purposes of this section:

158 (1) "Reprimand" is normally the appropriate sanction when the
159 respondent commits a single, relatively minor act that causes a
160 reasonable person to conclude that (A) the respondent, in the
161 performance of his or her official duties, has afforded undue influence
162 to another person or was unduly influenced by another person, or (B)
163 the respondent is likely to act or fail to act, in his or her official duties,
164 as a result of the undue influence exercised by another person or
165 afforded to another person. Such punishment may include a denial of
166 privileges of office. The recommendation for a reprimand is a public
167 record.

168 (2) "Censure" is normally the appropriate sanction when the
169 respondent commits more serious or repeated acts that constitute a
170 legal or moral wrong. A member who is censured shall not serve in
171 any leadership position and shall not serve as the chairperson or
172 cochairperson of any standing or interim legislative committee for the
173 remainder of that member's pending term in office. The respondent
174 shall be present in the chamber when the chamber considers and votes
175 on the resolution.

176 (3) "Expulsion" is for very serious breaches of legal or ethical
177 responsibilities of members that directly relate to their duties as
178 members of the General Assembly, and that impugn the integrity of
179 the General Assembly, reflect adversely on the General Assembly or
180 otherwise undermine public trust in the institution of the General
181 Assembly.

182 Sec. 2. (NEW) (*Effective from passage*) There is established a
183 Legislative Code of Conduct that consists of the following provisions:
184 Members of the General Assembly shall conduct themselves to justify
185 the confidence placed in them by the people and, by personal example
186 and admonition to colleagues, shall maintain the integrity and
187 responsibility of their office. In addition to the other rules of the
188 General Assembly, no member shall: (1) Engage in any conduct that
189 constitutes a legal wrong that materially impairs the ability of the
190 member to perform the duties of his or her office or substantially
191 impairs public confidence in the legislature. For purposes of this code,
192 "legal wrong" includes, but is not limited to, sexual harassment,
193 repeated violations of the state penal code and discrimination
194 prohibited under chapter 814c of the general statutes; (2) engage in any
195 conduct that intentionally violates any provision of the code of ethics
196 for public officials as set forth in chapter 10 of the general statutes. For
197 purposes of this section, a member of the General Assembly is
198 presumed to have intentionally violated the code of ethics only after
199 such a determination by the Office of State Ethics; or (3) use or attempt
200 to use his or her official position to secure unwarranted privileges or
201 exemptions for himself or herself or others.

202 Sec. 3. (NEW) (*Effective from passage*) Not later than December 31,
203 2010, and biennially thereafter, the Office of State Ethics shall
204 administer mandatory training on the code of ethics for public officials,
205 as set forth in chapter 10 of the general statutes, and on the Legislative
206 Code of Conduct, established in section 2 of this act, to each member of
207 the General Assembly.

208 Sec. 4. Section 1-84 of the 2008 supplement to the general statutes is

209 amended by adding subsection (s) as follows (*Effective July 1, 2008*):

210 (NEW) (s) No public official shall act in a manner that would cause
211 a reasonable person, having knowledge of the relevant circumstances,
212 to conclude that any person can improperly influence or unduly enjoy
213 such official's favor in the performance of their official duties, or that
214 such official is likely to act or fail to act as a result of kinship, rank,
215 position or undue influence of any party or person. It shall be
216 unreasonable to make such a conclusion if, prior to engaging in any
217 such act, such public official disclosed in writing to the Office of State
218 Ethics and in a manner that is public in nature, the facts that would
219 otherwise lead a reasonable person to such a conclusion.

220 Sec. 5. (NEW) (*Effective from passage*) As used in sections 5 to 7,
221 inclusive, of this act:

222 (1) "Public official" means public official, as defined in section 1-79
223 of the 2008 supplement to the general statutes, a judge of any court
224 either elected or appointed, and any elected or appointed municipal
225 official;

226 (2) "State or municipal employee" means state employee, as defined
227 in section 5-154 of the general statutes, and includes an employee of
228 any quasi-public agency, as defined in section 1-120 of the general
229 statutes, or any person, whether appointed or under contract, who
230 provides services for a city, town or other political subdivision of the
231 state for which a pension is provided; and

232 (3) "Crime related to state or municipal office" means any of the
233 following criminal offenses committed by a person while serving as a
234 public official or state or municipal employee:

235 (A) The committing, aiding or abetting of an embezzlement of
236 public funds from the state, a municipality or a quasi-public agency;

237 (B) The committing, aiding or abetting of any felonious theft from
238 the state, a municipality or a quasi-public agency;

239 (C) Bribery in connection with service as a public official or state or
240 municipal employee; or

241 (D) The committing of any felony by such person who, wilfully and
242 with the intent to defraud, realizes or obtains, or attempts to realize or
243 obtain, a profit, gain or advantage for himself or herself or for some
244 other person, through the use or attempted use of the power, rights,
245 privileges or duties of his or her position as a public official or state or
246 municipal employee.

247 Sec. 6. (NEW) (*Effective from passage*) (a) Notwithstanding any
248 provision of the general statutes, on or after January 1, 1998, if any
249 person is convicted or pleads guilty or nolo contendere to any crime
250 related to state or municipal office in state or federal court, the
251 Attorney General shall apply to the Superior Court for an order to
252 revoke or reduce the pension of any kind to which such person is
253 otherwise entitled under the general statutes for service as a public
254 official or state or municipal employee.

255 (b) In determining whether the pension shall be revoked or reduced,
256 the Superior Court shall consider and make findings on the following
257 factors:

258 (1) The severity of the crime related to state or municipal office for
259 which the person has been convicted or to which the person has pled
260 guilty or nolo contendere;

261 (2) The amount of monetary loss suffered by the state, a
262 municipality or a quasi-public agency or by any other person as a
263 result of the crime related to state or municipal office;

264 (3) The degree of public trust reposed in the person by virtue of the
265 person's position as a public official or state or municipal employee;

266 (4) If the crime related to state or municipal office was part of a
267 fraudulent scheme against the state or a municipality, the role of the
268 person in the fraudulent scheme against the state or a municipality;
269 and

270 (5) Any such other factors as, in the judgment of the Superior Court,
271 justice may require.

272 (c) If the court determines, or the Attorney General certifies, that a
273 public official or state or municipal employee, who was convicted or
274 pled guilty or nolo contendere to a crime related to state or municipal
275 office, voluntarily provided information to the Attorney General, the
276 Auditors of Public Accounts or any state, federal or local law
277 enforcement official concerning the commission of such crime related
278 to state or municipal office by another public official or state or
279 municipal employee, who had a greater degree of culpability for such
280 crime than the public official or state or municipal employee providing
281 such information, the court shall not reduce or revoke the pension of
282 such public official or state or municipal employee, provided such
283 public official or state or municipal employee voluntarily provided
284 such information prior to learning of a criminal investigation into such
285 crime related to state or municipal office.

286 (d) If the Superior Court determines that the pension of a person
287 should be reduced, it may, after taking into consideration the financial
288 needs and resources of any innocent spouse, dependents and
289 designated beneficiaries of the person, order that some or all of the
290 reduced pension be paid to any such innocent spouse, dependent or
291 beneficiary as justice may require.

292 (e) If the Superior Court determines that the pension of such person
293 should not be revoked or reduced, it shall order that the retirement or
294 other benefit or payment be made to such person.

295 Sec. 7. (NEW) (*Effective from passage*) (a) Any person whose pension
296 is revoked pursuant to section 6 of this act shall be entitled to a return
297 of his or her contribution paid into the relevant pension fund, without
298 interest.

299 (b) Notwithstanding the provisions of subsection (a) of this section,
300 no payments in return of contributions shall be made or ordered
301 unless and until the Superior Court determines that the person whose

302 pension has been revoked pursuant to section 6 of this act has satisfied
303 in full any judgments or orders rendered by any court of competent
304 jurisdiction for the payment of restitution to the state or a municipality
305 for losses incurred as a result of the crime related to state or municipal
306 office. If the Superior Court determines that the person whose pension
307 has been revoked under section 6 of this act has failed to satisfy any
308 outstanding judgment or order of restitution rendered by any court of
309 competent jurisdiction, it may order that any funds otherwise due to
310 such person as a return of contribution, or any portion thereof, be paid
311 in satisfaction of the judgment or order.

312 (c) No provision of section 6 of this act or this section shall be
313 construed to prohibit or limit any payment made pursuant to a
314 qualified domestic relations order issued prior to any such conviction
315 or plea by: (1) Any public official or state or municipal employee who
316 is convicted or pleads guilty or nolo contendere to any crime related to
317 state or municipal office; or (2) any state or municipal agency
318 responsible for the administration of such payment on behalf of such
319 public official or state or municipal employee.

320 (d) Notwithstanding the provisions of section 6 of this act, no
321 pension shall be reduced or revoked if the Internal Revenue Service
322 determines that such reduction or revocation will negatively affect or
323 invalidate the status of the state's government retirement plans or a
324 municipality's government retirement plans under Section 401(a) of
325 the Internal Revenue Code of 1986, or any subsequent corresponding
326 internal revenue code of the United States, as from time to time
327 amended.

328 Sec. 8. (NEW) (*Effective from passage*) (a) A public servant, as defined
329 in section 53a-146 of the general statutes, as amended by this act, is
330 guilty of failure to report bribery when the public servant: (1)
331 Witnesses what the public official knows or reasonably should know is
332 the promise, offer, conferring or agreement to confer upon a public
333 servant any benefit as consideration for such public servant's decision,
334 opinion, recommendation or vote; and (2) does not, as soon as

335 reasonably practicable, report such crime to a law enforcement agency.

336 (b) Failure to report bribery is a class A misdemeanor.

337 Sec. 9. Section 53a-146 of the general statutes is repealed and the
338 following is substituted in lieu thereof (*Effective from passage*):

339 For purposes of this part:

340 (1) An "official proceeding" is any proceeding held or which may be
341 held before any legislative, judicial, administrative or other agency or
342 official authorized to take evidence under oath, including any referee,
343 hearing examiner, commissioner or notary or other person taking
344 evidence in connection with any proceeding.

345 (2) "Benefit" means monetary advantage, or anything regarded by
346 the beneficiary as a monetary advantage, including benefit to any
347 person or entity in whose welfare the beneficiary is interested.

348 (3) "Public servant" is an officer or employee of government or a
349 quasi-public agency, as defined in section 1-120, elected or appointed,
350 and any person participating as advisor, consultant or otherwise, paid
351 or unpaid, in performing a governmental function.

352 (4) "Government" includes any branch, subdivision or agency of the
353 state or any locality within it.

354 (5) "Labor official" means any duly appointed or elected
355 representative of a labor organization or any duly appointed or elected
356 trustee or representative of an employee welfare trust fund.

357 (6) "Witness" is any person summoned, or who may be summoned,
358 to give testimony in an official proceeding.

359 (7) "Juror" is any person who has been drawn or summoned to serve
360 or act as a juror in any court.

361 (8) "Physical evidence" means any article, object, document, record
362 or other thing of physical substance which is or is about to be

363 produced or used as evidence in an official proceeding.

364 (9) "Person selected to be a public servant" means any person who
 365 has been nominated or appointed to be a public servant.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>July 1, 2008</i>	1-84
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	53a-146

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Department (Probation); Correction, Dept.	GF - Cost	Potential	Potential
Judicial Dept.; Legislative Mgmt.	GF - Cost	Minimal	Minimal
Comptroller Misc. Accounts (Fringe Benefits)	GF, State Employees Retirement Fund	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect
Various Municipalities	See Below

Explanation

The bill establishes a Legislative Code of Conduct and a Legislative Ethics Committee to enforce it. The bill provides for the appointment of a judge trial referee to review (in order to determine probable cause) the allegations of any ethics complaint that the Legislative Ethics Committee deems valid. Judge trial referees are compensated on a per diem basis at the rate of \$220. The bill does not specify whether the Judicial or Legislative branch would bear the cost of this compensation. However, it is anticipated that the cost would be minimal.

The revocation or reduction of retirement benefits permitted under the bill may result in a savings to the state employee retirement system and the municipal employee retirement system, which are administered by the Office of the State Comptroller (OSC). The potential savings to the retirement systems is dependent upon the

degree to which retirement benefits are reduced or revoked.

In instances where a state retirement benefit is revoked, there would also be a savings to the state's retiree health insurance account since eligibility for retiree health insurance is tied to eligibility for a retirement benefit. Additionally, when a person's retirement benefit is revoked, the bill specifies that they are entitled to a refund of their contributions without interest. This would reduce the retirement fund savings for those employees who contributed to their pensions. It would not impact the savings associated with Tier II members of the state employees retirement system, since that tier is noncontributory.

There could potentially be actuarial consulting costs to the OSC, which would be dependent on the volume of cases associated with the implementation of any reductions or revocations of retirement benefits.

The bill makes it a crime, punishable by a fine of up to \$2,000 and/or a prison term of up to 1 year, for any public servant to fail to report bribery. Any revenue gain from criminal fines under the bill would be minimal. To the extent that offenders are prosecuted criminally and subsequently convicted or plead guilty, the state could incur a cost associated with incarceration and/or probation supervision in the community. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The Out Years

The annualized ongoing cost of incarceration and probation identified above would continue into the future subject to inflation; the annualized revenue gain from criminal fines would remain relatively stable since fine amounts are set by statute.

OLR Bill Analysis**sSB 333*****AN ACT CONCERNING COMPREHENSIVE ETHICS REFORMS.*****SUMMARY:**

This bill:

1. generally permits state courts to revoke or reduce any retirement or other benefits due to state or municipal officials or employees who commit certain crimes related to their employment;
2. makes it a class A misdemeanor for public servants to fail to report a bribe;
3. establishes a Legislative Code of Conduct and a Legislative Ethics Committee to enforce it;
4. prohibits public officials from engaging in conduct that creates an appearance of impropriety; and
5. requires legislators to attend biennial training on the State Code of Ethics for Public Officials and the Legislative Code of Conduct.

EFFECTIVE DATE: Upon passage, except that the provision on the appearance of impropriety is effective July 1, 2008.

§§ 5-7 — CORRUPT OFFICIALS

With two exceptions, the bill permits state courts to revoke or reduce any retirement or other benefit due to state or municipal public officials or employees or quasi-public agency members and directors Who commit certain crimes related to their employment. Under the

exceptions, (1) no revocation or reduction prohibits or limits benefits that are the subject of a qualified domestic relations order (e.g., child support) and (2) no pension may be reduced or revoked if the IRS determines that the action will negatively affect or invalidate the status of the state's or a municipality's government retirement plans under Section 401 (a) of the Internal Revenue Code of 1986.

The bill requires the court to order payment of any benefit or payment that is not revoked or reduced.

Crimes Related to Office or Employment

The bill requires the attorney general to apply to the Superior Court for an order to revoke or reduce the benefits of a public official or employee who is convicted of or pleads guilty or *nolo contendere* (no contest) in federal or state court, on and after January 1, 1998, to:

1. committing or aiding or abetting the embezzlement of public funds from the state, a municipality, or a quasi-public agency;
2. committing or aiding or abetting any felonious theft from the state, a municipality, or a quasi-public agency;
3. bribery connected to his or her role as a public official or employee; or
4. felonies committed willfully and with intent to defraud to obtain or attempt to obtain an advantage for himself or herself or others through the use or attempted use of his or her office.

"Public officials" are (1) statewide elected officers, (2) legislators and legislators-elect, (3) judges, (4) gubernatorial appointees, (5) municipal elected and appointed officials, (6) public members and union representatives on the Investment Advisory Council, (7) quasi-public agency members and directors, and (8) people appointed or elected by the General Assembly or either chamber. The term does not include advisory board members or members of Congress.

"State employees" includes employees of quasi-public agencies.

Sentencing Considerations

When determining whether to revoke or reduce a public official's or employee's benefits or payments, the bill requires the court to consider:

1. the severity of the crime;
2. the amount of money the state, municipality, quasi-public agency, or anyone else lost as a result of the crime;
3. the degree of public trust reposed in the person by virtue of his or her position;
4. if the crime was part of a fraudulent scheme against the state or a municipality, the defendant's role in it; and
5. any other factors the court determines that justice requires.

The court cannot revoke or reduce the pension benefits of a public official or employee who cooperated with the state as a whistleblower before learning of the criminal investigation. This prohibition applies only if the court determines or the attorney general certifies that the official or employee voluntarily provided information to the attorney general, state auditors, or a law enforcement agency against a person more blameworthy than the official or employee.

After determining to reduce pension benefits, the court must consider the needs of an innocent spouse or beneficiary and may order that all or part of the benefits be paid to the spouse or beneficiary.

Revoked Benefits

If an official's or employee's pension is revoked, the bill entitles the person to the return of any contributions he or she made to it, without interest. But, the repayment cannot be made until the court determines that the official or employee has fully satisfied any judgment or court-ordered restitution related to the crime against the office. If the court determines that he or she has not, it may deduct the unpaid amount from the individual's pension contributions.

§§ 8 AND 9 — BRIBERY

The bill makes it a class A misdemeanor for public servants to fail to report a bribe. Public servants commit this crime when they (1) witness what they know or reasonably should know is a promise, offer, transfer, or agreement to transfer to a public servant any benefit as consideration for his or her decision, opinion, recommendation, or vote and (2) do not report the crime to a law enforcement agency as soon as reasonably practicable.

The bill, expands the definition of “public servant” applies to existing bribery and bribe receiving crimes, as well as this new crime. The bill expands the public servants covered by these crimes to include quasi-public agency officers and employees. Elected and appointed government officers and employees and people performing a government function, including advisors and consultants, are already covered.

§ 2 — LEGISLATIVE CODE OF CONDUCT

The bill establishes a Legislative Code of Conduct. Under the code, legislators must conduct themselves in ways that justify the confidence the people placed in them and maintain, by personal example and admonition to colleagues, the integrity and responsibility of their office.

In addition to other General Assembly rules, the code must prohibit legislators from:

1. engaging in any conduct that constitutes a legal wrong that materially impairs their ability to perform the duties of their office or substantially impairs public confidence in the legislature;
2. engaging in any conduct that intentionally violates any provision of the State Code of Ethics for Public Officials; or
3. using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

The bill defines “legal wrong” as, among other things, sexual harassment, repeated violations of the state penal code, and act of discrimination. It creates a presumption that a legislator intentionally violated the state ethics code if the Office of State Ethics determines that such a violation occurred.

§ 1 — LEGISLATIVE ETHICS COMMITTEE

The committee issues advisory opinions, receives complaints from legislators of Legislative Code of Conduct violations, and reviews and adjudicates the complaints.

Membership

The bipartisan committee consists of six legislators. The top four legislative leaders each appoint one member, the Senate president pro tempore and House speaker jointly appoint one, and the Senate and House minority leaders jointly appoint one. The jointly appointed members serve as committee co-chairs person. Members serve two-year terms coterminous with their term of office. Four members constitute the quorum necessary to conduct any business. The committee functions when the legislature is in session and during the interim.

Advisory Opinions

Under the bill, a legislator may make a written request to the committee for an advisory opinion (1) interpreting the Legislative Code of Conduct or (2) on the code’s application to a real or hypothetical situation. The committee must respond to the request in writing and make the response, but not the identity of the requestor, publicly available.

Any legislator who fully discloses all of the relevant facts in a request for an advisory opinion and acts in good faith on the advice he or she receives from the committee cannot be disciplined for any matter covered in the opinion (see COMMENT). The committee must keep copies of its advisory opinions for consistency.

Complaints

Any legislator may file a complaint with the committee that alleges a violation of the Legislative Code of Conduct that occurred after the code's adoption. A valid complaint must:

1. be in writing;
2. state the names of the person filing the complaint and the alleged violator, and the date of the alleged violation;
3. set forth, in sufficient detail and clarity, the allegations that, if true, would constitute a code violation;
4. include a statement that the allegations are true to the complainant's own knowledge or that the complainant believes them to be true; and
5. be signed by the complainant under penalty of perjury.

If the complaint is facially deficient, the committee must return it to the complainant with a statement indicating the nature of the deficiency. If the complainant corrects the deficiency and re-files the complaint, the committee must give the person charged in the complaint (respondent) a copy of the complaint. The committee must also provide respondents with a copy of any amendments to a complaint.

The committee must review complaints that are facially sufficient to determine if they state a charge that is timely (i.e., allege a violation that occurred after the code's adoption) and properly within the committee's jurisdiction (i.e., allege a code violation). The committee must dismiss any complaint that is not valid and return it to the complainant with a notice of dismissal and the reasons for it.

The bill established a two-step process for determining if a valid complaint alleges conduct that constitutes a violation.

Probable Cause Determination

The committee must refer valid complaints to the chief court

administrator and ask her to appoint a judge trial referee to determine whether (1) there is probable cause to believe the allegations violate the Legislative Code of Conduct and (2) the committee should hold an evidentiary hearing (see COMMENT). The referee must determine probable cause within 30 days after the committee refers the complaint unless the referee finds good cause for extending the time.

During any probable cause review or hearing, the respondent has the right to appear and be heard and to offer any information that may tend to disprove the allegations. The respondent also has the right to be represented by legal counsel and to examine and cross-examine witnesses.

The probable cause review is closed to the public. The records and documents used in it are not subject to disclosure under the Freedom of Information Act unless the respondent requests it.

Committee Hearings

The committee must initiate a hearing within 30 days of a determination that probable cause exists. However, the committee may grant itself one 15-day extension upon the mutual consent of the complainant and the respondent. It is unclear whether the hearings are open to public (see COMMENT).

During the hearing, the committee must receive all admissible evidence, determine any factual or legal issues presented, and make findings of fact based upon evidence received. The rules of evidence apply.

For an allegation to be proved, a majority of the committee must vote that it is proved by clear and convincing evidence. A member of the committee may move for reconsideration only if he or she was among the majority voting that a count was not proved by clear and convincing evidence. The co-chairpersons of the committee must dismiss each allegation that is not proved by clear and convincing evidence.

If a complaint is filed against a committee member, he or may not participate in the proceeding. A committee member found to have violated the code is banned from serving on the committee.

A committee member may recuse himself or herself from participating in any investigation by submitting a written statement that he or she cannot render an impartial and unbiased decision in the matter. If a member of the committee is disqualified or recuses himself or herself, the appointing authority must appoint a replacement member during the period of the disqualification or recusal.

The committee must render any decision finding a violation within 14 days after the hearing. It must recommend whether the violator should be expelled, censured, or reprimanded, or whether no action should be taken (see below). The recommendation, which must be in the form of a resolution, must be referred to the chamber in which the violator serves.

The appropriate chamber must consider the recommendation within 14 after receipt and vote on it (see COMMENT). A majority vote is necessary to censure or reprimand a member; a two-thirds vote is required to expel.

Definitions

The bill defines the possible sanctions for code violations as follows.

“Reprimand” is normally the appropriate sanction when the respondent commits a single, relatively minor act that causes a reasonable person to conclude that he or she (1) afforded undue influence to, or was unduly influenced by, another person when performing his or her official duties, or (2) will likely act or fail to act as a result of the undue influence afforded to or exercised by another person. Reprimand may include a denial of privileges of office. The recommendation for a reprimand is a public record.

“Censure” is normally the appropriate sanction when the respondent commits more serious or repeated acts that constitute a

legal or moral wrong. A censured legislator cannot serve in any leadership position or chair or cochair any standing or interim legislative committee for the remainder of his or her term. The respondent must be present in the chamber when the chamber considers and votes on the resolution.

“Expulsion” is for very serious breaches of legal or ethical responsibilities that directly relate to legislative duties and impugn the integrity of, reflect adversely on, or otherwise undermine public trust in, the General Assembly.

§ 4 — APPEARANCE OF IMPROPRIETY

The bill amends the State Ethics Code for Public Officials. Specifically, it prohibits public officials from acting in a manner that would cause a reasonable person with knowledge of the relevant circumstances to conclude that (1) anyone can improperly influence or unduly enjoy the official’s favor as he or she performs official duties or (2) the official is likely to act or fail to act as a result of kinship, rank, position, or undue influence. The bill specifies that a conclusion is unreasonable if, before engaging in the act, the public official publicly discloses to the Office of State Ethics, in writing, the facts that would lead a reasonable person to such a conclusion.

Just as it does with other ethics code violators, the Office of State Ethics may order violators of the ban against the appearance of impropriety to (1) cease and desist the violation or (2) pay a fine of up to \$10,000. The agency can also report its determination to the chief state’s attorney. Intentional violators may, in addition to the above sanction, be guilty of a class A misdemeanor for a first violation (or a class D felony if the violator derived a financial benefit of at least \$1,000 from the violation) or a class D felony for two or more violations.

§ 3 — TRAINING

By December 31, 2010 and biennially thereafter, the bill requires the Office of State Ethics to provide mandatory training to legislators on

the Code of Ethics for Public Officials and Legislative Code of Ethics.

BACKGROUND

Penalties for Class A Misdemeanors and Class D Felonies

A class A misdemeanor is punishable by up to one year in prison, a \$2,000 fine, or both. A class D felony is punishable by up to 5 years in prison, a \$5,000 fine, or both.

Related Bill

sHB 5507, favorably reported by the Government Administration and Elections Committee, permits courts to revoke or reduce pension benefits, makes failure to report a bribe a crime, and requires legislators to attend biennial ethics training.

COMMENTS

Discipline

Section 1 (e) seeks to protect from disciplinary actions legislators who rely, in good faith, on an advisory opinion. However, Article III, § 13 of the state constitution gives each chamber the power to discipline its members for disorderly conduct.

Committee Hearings

In section 1 (g) (1), the bill requires a judge trial referee (JTR) to determine probable cause and whether the legislative committee should hold an evidentiary hearing. This suggests the JTR could find probable cause and decide against the committee conducting a hearing. However, section 1 (g) (3) requires the committee to initiate a hearing once probable cause is found.

Openness

The bill appears to intend to close probable cause reviews and hearings to the public and open committee hearings. However, section 1 (g) (1) frustrates this intent. Language empowering a JTR to decide whether an “evidentiary hearing should be held by the legislative committee” followed by a sentence requiring “evidentiary” hearings to be closed, makes it unclear whether committee hearings are closed or

open as stated in section 1 (g) (4).

Action on Resolutions

Section 1 (g) (6) states that the legislative committee's final recommendations must be in the form of a resolution for approval or rejection by the appropriate chamber but section 1 (i) requires the chamber to "accept, dismiss, or alter" the resolution.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/17/2008)